

109TH CONGRESS
1ST SESSION

H. R. 1299

To amend the Endangered Species Act of 1973 to reform the process for designating critical habitat under that Act.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2005

Mr. CARDOZA (for himself, Mr. DOOLITTLE, Mr. JONES of North Carolina, Mr. BACA, Mr. HERGER, Mr. RADANOVICH, Mr. COSTA, Mr. OTTER, Mr. CALVERT, Mr. PETERSON of Pennsylvania, Mr. WALDEN of Oregon, Mr. SIMPSON, Mr. OSBORNE, Mr. REHBERG, Mr. NUNES, Ms. BORDALLO, and Mr. GARY G. MILLER of California) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Endangered Species Act of 1973 to reform the process for designating critical habitat under that Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Critical Habitat En-
5 hancement Act of 2005”.

6 **SEC. 2. DESIGNATION OF CRITICAL HABITAT; STANDARD.**

7 (a) IN GENERAL.—Section 4(a) of the Endangered
8 Species Act of 1973 (16 U.S.C. 1533(a)) is amended—

1 (1) by redesignating subparagraph (B) of para-
2 graph (3) as paragraph (4);

3 (2) in paragraph (4) (as so redesignated)—

4 (A) by striking “(i)” and inserting “(A)”;

5 (B) by striking “(ii)” and inserting “(B)”;

6 and

7 (C) by striking “(iii)” and inserting “(C)”;

8 and

9 (3) by amending paragraph (3) to read as fol-
10 lows:

11 “(3)(A)(i) The Secretary shall, by regulation promul-
12 gated in accordance with subsection (b) and to the max-
13 imum extent practicable, prudent, and determinable, issue
14 a final regulation designating any habitat of the species
15 determined to be an endangered species or threatened spe-
16 cies that is critical habitat of the species.

17 “(ii) The Secretary shall make any designation re-
18 quired under clause (i) by not later than one year after
19 the final approval of a recovery plan for the species under
20 section 4(f), or 3 years after the date of publication of
21 the final regulation implementing a determination that the
22 species is an endangered species or threatened species,
23 whichever is earlier.

24 “(B) The Secretary shall reconsider any determina-
25 tion that designation of critical habitat of a species is not

1 practicable, or determinable, during the next review under
2 section 4(c)(2)(A) or at the time of a final approval of
3 a recovery plan for the species under section 4(f).

4 “(C) The Secretary may, from time-to-time as appro-
5 priate, revise any designation of critical habitat under this
6 paragraph.

7 “(D) Notwithstanding subparagraphs (A), (B), and
8 (C), any designation of an area as critical habitat shall
9 not apply with respect to any action authorized by—

10 “(i) a permit under section 10(a) (including any
11 conservation plan or agreement under that section
12 for such a permit) that applies to the area;

13 “(ii) a written statement under section 7(b)(4);
14 or

15 “(iii) a land conservation or species manage-
16 ment program of a State, a Federal agency, a feder-
17 ally recognized Indian tribe located within the con-
18 tiguous 48 States, or the Metlakatla Indian Commu-
19 nity that the Secretary determines provides protec-
20 tion for habitat of the species that is substantially
21 equivalent to the protection that would be provided
22 by such designation.

23 “(E) Nothing in this paragraph shall be construed
24 to authorize a recovery plan to establish regulatory re-

1 requirements or otherwise to have an effect other than as
 2 non-binding guidance.”.

3 (b) CONFORMING AMENDMENT.—Section 4(b)(6)(C)
 4 of the Endangered Species Act of 1973 (16 U.S.C.
 5 1533(b)(6)(C)) is repealed.

6 **SEC. 3. BASIS FOR DETERMINATION.**

7 Section 4(b)(2) of the Endangered Species Act of
 8 1973 (16 U.S.C. 1533(b)(2)) is amended—

9 (1) by inserting “(A)” after “(2)”; and

10 (2) by adding at the end the following:

11 “(B) In determining whether an area is critical habi-
 12 tat, the Secretary shall seek and, if available, consider in-
 13 formation from State and local governments in the vicinity
 14 of the area, including local resource data and maps.

15 “(C) Consideration of economic impact under this
 16 paragraph shall include—

17 “(i) direct, indirect, and cumulative economic
 18 costs and benefits, including consideration of
 19 changes in revenues received by landowners, the
 20 Federal Government, and State and local govern-
 21 ments; and

22 “(ii) costs associated with the preparation of re-
 23 ports, surveys, and analyses required to be under-
 24 taken, as a consequence of a proposed designation of
 25 critical habitat, by landowners seeking to obtain per-

1 mits or approvals required under Federal, State, or
 2 local law.

3 “(D) In designating critical habitat of a species, the
 4 Secretary shall first consider all areas that are known to
 5 be within the geographical area determined by field survey
 6 data to be occupied by the species.”.

7 **SEC. 4. CONTENT OF NOTICES OF PROPOSED DESIGNATION**
 8 **OF CRITICAL HABITAT.**

9 Section 4(b)(5)(A) of the Endangered Species Act of
 10 1973 (16 U.S.C. 1533(b)(5)(A)) is amended—

11 (1) in clause (i) by striking “, and” and insert-
 12 ing a semicolon;

13 (2) in clause (ii)—

14 (A) by striking “and to each” and insert-
 15 ing “to each”; and

16 (B) by inserting “, and to the county and
 17 any municipality having administrative jurisdic-
 18 tion over the area” after “to occur”; and

19 (3) by adding at the end the following:

20 “(iii) with respect to a regulation to des-
 21 ignate or revise a designation of critical habi-
 22 tat—

23 “(I) publish maps and coordinates
 24 that describe, in detail, the specific areas
 25 that meet the definition under section 3 of,

1 and are designated under section 4(a) as,
 2 critical habitat, and all field survey data
 3 upon which such designation is based; and
 4 “(II) maintain such maps, coordi-
 5 nates, and data on a publicly accessible
 6 Internet page of the Department; and
 7 “(iv) include in each of the notices re-
 8 quired under this subparagraph a reference to
 9 the Internet page referred to in clause
 10 (iii)(II);”.

11 **SEC. 5. CLARIFICATION OF DEFINITION OF CRITICAL HABITAT.**
 12 **TAT.**

13 Section 3(5) of the Endangered Species Act of 1973
 14 (16 U.S.C. 1532(5)) is amended—

15 (1) in subparagraph (A) by striking clauses (i)
 16 and (ii) and inserting the following:

17 “(i) the specific areas—

18 “(I) that are within the geographical area
 19 determined by field survey data to be occupied
 20 by the species at the time the areas are des-
 21 ignated as critical habitat in accordance with
 22 section 4; and

23 “(II) on which are found those physical
 24 and biological features that are necessary to
 25 avoid jeopardizing the continued existence of

1 the species and may require special manage-
2 ment considerations or protection; and

3 “(ii) areas that are not within the geographical
4 area referred to in clause (i)(I) and that the Sec-
5 retary determines are essential for the survival of
6 the species at the time the areas are designated as
7 critical habitat in accordance with section 4.”;

8 (2) by striking subparagraph (B) and redesign-
9 ating subparagraph (C) as subparagraph (B); and

10 (3) by adding at the end the following:

11 “(C) For purposes of subparagraph (A)(i) the term
12 ‘geographical area determined by field survey data to be
13 occupied by the species’ means the specific area that, at
14 the time the area is designated as critical habitat in ac-
15 cordance with section 4, is being used by the species for
16 breeding, feeding, sheltering, or another essential behav-
17 ioral pattern.”.

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